

FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

AUDIT REFERRALS: 99-06, 99-09
DATE ACTIVATED: March 3, 2000 DEC 12 2000

EXPIRATION OF STATUTE OF
LIMITATIONS: February, 2001¹
STAFF MEMBER: Peter G. Blumberg

EXECUTIVE SESSION

SOURCE: Internally Generated/Audit Referral

RESPONDENTS: Dole for President, Inc.
and Robert J. Dole, as treasurer
Dole/Kemp '96, Inc.
and Robert J. Dole, as treasurer
Branch Banking & Trust Corporation

MUR: 4670
DATE COMPLAINT FILED: October 31, 1996
DATE OF NOTIFICATION: November 6, 1996
DATE ACTIVATED: April 20, 2000

EXPIRATION OF STATUTE OF
LIMITATIONS: August, 2001
STAFF MEMBER: Peter G. Blumberg

SOURCE: Complaint Generated

COMPLAINANT: Mark Kleinman

RESPONDENTS: Dole/Kemp '96, Inc.
and Robert J. Dole, as treasurer

¹ The earliest possible date for the expiration of the statute of limitations for the various violations at issue in this Report are as follows: AR 99-06, Dole for President, Inc. state expenditure limitation, February 2001; AR 99-09 Dole/Kemp '96, Inc. excess spending, August 2001; AR 99-09 Dole/Kemp receipt of contribution from Dole for President, October 30, 2001; AR 99-09 Dole/Kemp '96, Inc. receipt of loan from BB&T, October 25, 2001; MUR 4670, Dole/Kemp '96, Inc. receipt of contributions from press entities, August 2001.

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**RELEVANT STATUTE(S)
AND REGULATIONS:**

2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(11)
2 U.S.C. § 434(a)(1)
2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(b)
2 U.S.C. § 441a(e)
2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)
2 U.S.C. § 441e
26 U.S.C. § 9001
26 U.S.C. § 9002(11)
26 U.S.C. § 9003(b)
26 U.S.C. § 9003(b)(2)
26 U.S.C. § 9006
26 U.S.C. § 9007(a)
26 U.S.C. § 9031
26 U.S.C. § 9032(9)
26 U.S.C. § 9035(a)
11 C.F.R. § 100.7(a)(1)(i)(A)
11 C.F.R. § 100.7(a)(1)(i)(B)
11 C.F.R. § 100.7(b)(11)
11 C.F.R. § 106.2(a)(1)
11 C.F.R. § 106.2(b)(2)(v)
11 C.F.R. § 111.8(a)
11 C.F.R. § 114.2(a)
11 C.F.R. § 9002.13
11 C.F.R. § 9034.4(a)(1)

INTERNAL REPORTS CHECKED: Audit Materials

FEDERAL AGENCIES CHECKED: None

23-04-406-3604

I. GENERATION OF MATTER

Audit Referral ("AR") 99-06 was generated by the audit of Dole for President, Inc. ("the Primary Committee")² undertaken in accordance with 26 U.S.C. § 9038(a). AR 99-09 was generated by the audit of Dole/Kemp '96, Inc. ("General Committee")³ undertaken in accordance with 26 U.S.C. § 9007(a). Referral materials from the respective audits are attached. Attachments 1-2. MUR 4670 was generated by a complaint filed by Mark Kleinman. Attachment 3.

II. AR 99-06 - STATE EXPENDITURE LIMITATION

A. Applicable Law

The Federal Election Campaign Act of 1971 ("FECA") provides that no candidate who is eligible to receive payments under the Presidential Primary Matching Payment Account Act ("Matching Payment Act") may make expenditures in any one State that "exceed the greater of 16 cents multiplied by the voting age population of the State . . . , or \$200,000." 2 U.S.C. § 441a(b)(1)(A). With regard to allocating expenditures to a particular State, Commission regulations provide that the expenditures "shall be allocated to a particular State if incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to that State." 11 C.F.R. § 106.2(a)(1). Finally,

² The Primary Committee received \$13,545,771 in public funds for the purpose of seeking the Republican Party nomination. In consideration for receiving public funds, the Primary Committee agreed to a mandatory audit of its receipts and disbursements. See 26 U.S.C. § 9033(a)(3).

³ The General Committee received \$61,820,000 in public funds under the Presidential Election Campaign Fund Act for the 1996 general election. In consideration for receiving public funds, the General Committee agreed to a mandatory audit of its receipts and disbursements. See 26 U.S.C. § 9003(a)(3).

with regard to the allocation of public opinion poll expenditures, Commission regulations

provide:

Expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State . . . Expenditures incurred for the taking of a public opinion poll include consultant's fees, travel costs, and other expenses associated with designing and conducting the poll.

11 C.F.R. § 106.2(b)(2)(v).

B. Facts

For the 1996 election cycle, the state spending limitation for Iowa was \$1,046,984.⁴ The Primary Committee reported expenditures allocable to Iowa of \$1,040,306.⁵ In the Audit Report, the Commission determined that an additional \$142,366 should have been allocated to the Iowa limit.⁶ This total consists of the following types of expenditures:

overhead expenditures (office supplies, event expenses, office utilities, printing)	\$85,638
polling expenses	\$41,742
phone programs and related development costs	\$15,369
Total	\$142,749.00 ⁷

⁴ In order to determine the Iowa state expenditure limitation for 1996, the Iowa voting age population (2,117,000) is multiplied by \$00.16, and is then adjusted by a cost of living factor of 3.091. 2 U.S.C. § 441a(b)(1)(A).

⁵ The Primary Committee filed an amended report on July 15, 1997 in which it reduced this amount by \$1,147 to \$1,039,159. However, the Primary Committee did not provide any documentary support to explain this reduction. Consequently, the earlier reported figure will be used.

⁶ The Commission did not make a determination that the Primary Committee must make a repayment for exceeding the state expenditure limitation. However, during the audit process, the Primary Committee received an Exit Conference Memorandum discussing the apparent excess spending for the state limitation, and the Primary Committee presented a response challenging the Exit Conference Memorandum's findings. The response to the Exit Conference Memorandum is discussed in this Report.

⁷ The difference between the additional amount the Commission determined should have been allocated to Iowa -- \$142,366 -- and the total of the amounts in the table -- \$142,749 -- is accounted for by a vendor's credit issued to the Primary Committee for \$383. This amount was allocable to the Iowa limit and was deducted from the total allocable expenses for Iowa. ($\$142,749 - \$383 = \$142,366$).

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The Audit Division's review of these individual disbursements revealed that the Primary Committee identified the disbursements as allocable to Iowa in its accounting system, or that the supporting documentation in the vendor files indicated that the disbursements were allocable to Iowa.

The actual additional amount that should have been allocated to the Iowa state expenditure limitation after applying the 10% overhead exclusion and the 50% fundraising exemption is \$59,772. See 11 C.F.R. 106.2(b)(1), 11 C.F.R. § 110.8(c)(2). Therefore, the Primary Committee made expenditures allocable to the Iowa expenditure limitation of \$1,100,078 (\$1,040,306 + \$59,772). Consequently, the Primary Committee spent \$53,094 (\$1,100,078 - \$1,046,984) in excess of the Iowa spending limitation.

The Primary Committee states that the amount it spent in excess of the Iowa limit was \$26,658.86 rather than \$53,094. The Primary Committee argued that Commission erroneously allocated the following costs to the Iowa limit: 1) \$21,083 (indirect polling costs); 2) \$1,054 (pager rentals); 3) \$21,693 (polling and telemarketing costs); and 4) \$10,609 (travel costs).

Attachment 1 at 39. In regard to the indirect polling costs, the Primary Committee argued:

These indirect costs were related to activities that were strategic in nature and had overarching implications for the campaign in all fifty states and not only in Iowa. . . . Indeed, per instructions from DFP [Dole for President] polling vendors broke down their bills according to whether their services were directly related to Iowa or were indirect as described above. . . . The vendors provided these overarching indirect services with the intent that they would provide polling services to DFP throughout its entire campaign.

Id.

C. Analysis

The Primary Committee admits that it spent \$26,658.86⁸ in excess of the Iowa limit. However, the Commission-approved Audit Report concludes that the Primary Committee exceeded the Iowa State expenditure limitation by \$53,094. The Primary Committee itself allocated many of these expenditures to Iowa in its own accounting system, and then inexplicably did not report these expenditures as subject to the Iowa spending limitation.

The Primary Committee contends that \$21,083⁹ in indirect polling costs paid to Fabrizio, McLaughlin & Associates ("Fabrizio") were not allocable to Iowa because they had "implications for the campaign in all fifty states and not only in Iowa." Attachment 1 at 39. The Primary Committee's database indicates that the Primary Committee made regular monthly payments of at least \$2,000 to Fabrizio for general "consulting fees." The database further indicates that the Primary Committee paid Fabrizio for polling costs the Primary Committee allocated to specific states. The relevant invoices indicate that the polling costs at issue are related to polling costs incurred for polls in Iowa. Two invoices of \$7,605 each are for "Iowa

⁸ There is an internal inconsistency in the figures provided by the Primary Committee. The Primary Committee admits that it exceeded the expenditure limitation by \$26,658.86 and argues that \$26,689.64 is not properly allocable to Iowa. (The table below calculates the applicable exemption amount for each cost contested by the Primary Committee.) However, these two figures total \$53,348.50, rather than \$53,094 (\$26,658.86 + \$26,689.64 = \$53,348.50).

Type of Cost	Amount	10% Compliance Exemption	50% Fundraising Exemption
Indirect Costs	\$21,083.00		\$10,541.50
Pagers	\$1,054.18		\$527.09
Polling and Telemarketing	\$21,693.99		\$10,846.99
Travel	\$10,609.00	\$9548.10	
Totals	\$54,440.17		\$26,689.64

⁹ The Primary Committee appears to have miscalculated this number, and based upon the invoices submitted by the Primary Committee, the correct amount at issue is \$22,083.

Tracking Surveys.” Attached to these invoices are two invoices of \$4,095 each for “Polling Consulting.” The Primary Committee itself allocated these costs to Iowa. Furthermore, on the same day Fabrizio submitted invoices for these services to the Primary Committee, Fabrizio also submitted invoices for general consulting fees. Because these two “Polling Consulting” invoices are attached to the Iowa surveys and because the Primary Committee separately paid the other general consulting fees, the Office of General Counsel believes that these polling costs are allocable to Iowa.¹⁰ See 11 C.F.R. § 106.2(b)(2)(v). In regard to the remaining costs at issue, the Primary Committee contends that overhead expenses associated with a poll in a specific state are not allocable to that state. However, overhead expenses associated with polls taken in Iowa are allocable to Iowa because they are part of the cost of “conducting” the poll. See *id.*

The Primary Committee further contends that \$1,054.18 in pager rentals are not properly allocable to Iowa. The relevant invoices indicate that the pagers were rented in Iowa in late 1995 and early 1996. For each invoice, the Primary Committee allocated most of the costs to Iowa, and allocated the amounts at issue to “advance” on its check request forms. The Primary Committee has not demonstrated that the pagers were properly allocable to “advance” by showing that the pagers were used in states other than Iowa. The pagers the Primary Committee allocated to “advance” appear on the same invoice as the Iowa pagers. The Primary Committee has provided no explanation as to why some of these pagers are not properly allocable to Iowa. Consequently, these pager costs are allocable to Iowa. See 11 C.F.R. § 106.2(a)(1).

¹⁰ With regard to the claim that these “Iowa tracking surveys” had national “implications,” we note that under this theory no polling costs would ever be allocable to a state expenditure limitation. In this case, there is no evidence to suggest that the polls were used outside of Iowa.

The Primary Committee contends that \$21,693 in polling and telemarketing costs are not allocable to Iowa. The relevant invoices indicate that the costs were related to Iowa polling and telemarketing costs. Furthermore, the Primary Committee's check requests indicate that the Primary Committee itself allocated most of these costs to Iowa. Therefore, these polling and telemarketing costs are allocable to Iowa. *See* 11 C.F.R. § 106.2(a)(1).

Finally, the Primary Committee contends that \$10,609¹¹ in travel costs are not allocable to Iowa. The relevant invoices indicate that these travel costs were incurred by employees of TKO Productions, a company which provided lighting, sound and staging services for campaign appearances in Iowa by Mrs. Elizabeth Dole between December 5, 1995 and February 11, 1996. These travel costs were therefore part of the cost of staging campaign events in Iowa. Thus, these travel costs are allocable to Iowa. *See* 11 C.F.R. § 106.2(a)(1).

The Office of General Counsel recommends that the Commission find reason to believe that Dole for President, Inc. and its treasurer, Robert J. Dole, violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a) by spending \$53,094 in excess of the Iowa spending limitation. However, this finding is theoretically based on the same disbursements causing the "overage" in the calculation of the Primary Committee's excess spending for the overall expenditure limitation, and for which the Commission has already found reason to believe that a violation occurred in MUR 4382. *See* Explanation and Justification for 11 C.F.R. § 9038.2, 56 Fed. Reg. 35907, 35908 (July 29, 1991) (explaining why, under 11 C.F.R. § 9038.2(b)(2)(v), in cases

¹¹ The invoices submitted by the General Committee indicate that the travel costs totaled \$8,880.72 rather than the amount asserted by the General Committee.

where a committee exceeds both the state and overall expenditure limitations, a repayment determination shall be based on the larger of the two in order to "avoid the possibility of double counting"). Moreover, the statute of limitations for this violation is relatively near (February 2001). Therefore, this Office recommends that the Commission take no further action with respect to this finding.

III. AR 99-09 - GENERAL ELECTION EXPENDITURE LIMITATION

AR 99-09 contains a finding that the General Committee exceeded the overall expenditure limitation for the general election. The Commission is currently conducting an administrative review of its determination that the General Committee must repay \$2,547,429 for incurring expenditures in excess of the general election expenditure limitation.¹² Based on Commission decisions to date, it appears that the repayment determination will be revised to lower the amount of the repayment.¹³ Thus, this Report utilizes figures that appear to be consistent with Commission votes, taken to date, in the administrative review context regarding whether reimbursements collected from the press and from the GELAC were excessive and whether accounts payable are attributable to the expenditure limitation. These figures, however,

¹² The repayment determination was set forth in an Audit Report for the General Committee, and the General Committee contested the determination. Attachment 6.

¹³ On October 19, 2000, the Commission decided to permit the General Committee to bill the press for a portion of sound and lighting costs that previously, in the Audit Report, had been deemed a General Committee expense, not billable to the press. Because excessive press reimbursements are attributable to the General Committee's expenditure limitation, the Commission's decision serves to lower the amount by which the General Committee exceeds the expenditure limitation.

have not been officially approved by the Commission and could still change depending on future votes related to the administrative review.¹⁴

A. Applicable Law

No candidate for the office of President of the United States who is eligible under 26 U.S.C. § 9003 to receive payments from the Secretary of the Treasury may make expenditures in excess of \$20,000,000 in the case of a campaign for election to such office as adjusted by inflation. *See* 2 U.S.C. § 441a(b)(1)(B) and (C). In 1996, the inflation-adjusted overall expenditure limitation was \$61,820,000. Under the Commission's regulations, the expenditure limitation will not be considered violated if, after the general election, the committee receives refunds and rebates that cause the expenditures to be within the limitations. 11 C.F.R. § 110.8(b).

1. Press Reimbursements

Commission regulations provide that "[e]xpenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service and typewriters) made available to media personnel . . . will be subject to the overall expenditure limitations." *See* 11 C.F.R. § 9004.6(a)(1) (1999). Commission regulations further provide that "committees may seek reimbursement for these expenses, and may deduct reimbursements received from media representatives from the amount of expenditures subject to the overall expenditure limitations." *See* 11 C.F.R. § 9004.6(a)(2)

¹⁴ The total amount the General Committee reported to the expenditure limitation and the adjustments arising out of the audit are shown at attachment 23.

(1999). However, the amount of reimbursement is limited to 110% of the media representative's pro rata share of the services provided. *See* 11 C.F.R. § 9004.6(b)(1) (1999). This share is calculated by dividing the total actual cost of the transportation, ground services and facilities provided by the total number of individuals to whom they were made available. *See* 11 C.F.R. § 9004.6(b)(2) (1999). For purposes of this calculation, the total number of individuals includes committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom the transportation, services and facilities are made available. *See id.* The purpose of this regulation is to eliminate the possibility that a campaign could be subsidized by the media or other individuals through charging higher than pro rata shares for the use of candidate-supplied transportation, services, or facilities. *See Explanation and Justification for* 11 C.F.R. § 9004.6, 45 Fed. Reg. 43376 (Sept. 5, 1980).

23-04-406-3613

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1. Press Reimbursements

In the Audit Report, the Commission concluded that the General Committee collected excessive press reimbursements totaling \$1,219,281 which must be added to its expenditure limitation. The Commission is currently engaged in the administrative review process for this finding, and the adjusted figure from that process for excessive press reimbursements is expected to be \$487,033.10. Based on an audit of the General Committee's records, documented actual press travel costs total \$9,160,993.22. However, General Committee receipts indicate that \$9,648,026.32 was collected from the press for travel reimbursements. The resulting excessive amount is \$487,033.10 and is attributable to the expenditure limitation.

The excessive reimbursements can be attributed to two factors: (1) certain costs, related to catering, ground transportation and events, were considered not to be press costs, and therefore, the General Committee was disallowed to seek reimbursement for them; and (2) the General Committee collected excess amounts from the press for otherwise legitimate costs.

Unlike the disallowed costs for catering, ground transportation, and events, which are related to

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specific invoices, the excess collections are not attributable to any specific type of cost.

However, based on a review of General Committee billings, it can be surmised that a significant amount of the excess collections may be related to the actual operation of the three General Committee aircraft. General Committee billing records indicate that it may have overbilled the press for the actual cost of flights by approximately \$800,000. The flight costs include the contract costs for the General Committee's three aircraft and variable costs (e.g., fuel, landing fees) incurred for operating the aircraft. The General Committee and the Commission's Audit Division have similar calculations for the actual contract and variable costs of the flights.

However, the Committee did not use the actual hourly cost figure to prepare billings for the press and the Secret Service, and it has not provided an explanation for the derivation of its billing rates. The hourly rates used for billing varied significantly during the campaign, but generally exceeded the rate that should have been generated by the use of the actual costs. The amount actually collected from the press, when added to the accounts receivable reported by the Committee, exceeded the amount that Committee records show as the amount billed.¹⁵

In addition to the excess collections described in the previous paragraph, \$303,362.56 in reimbursements were disallowed because the amounts collected did not relate to press costs. Based on the audit of press reimbursements, several costs were not considered actual press costs

¹⁵ The amount over-billed for the costs of operating Committee aircraft is approximately \$800,000. This figure, however, has limited relevance since the press reimbursements determination focuses on amounts *collected* versus actual costs. As noted, the amounts billed by the Committee did not bear a relation to either the actual costs or the amounts collected. Moreover, the excess billings for flights were partially offset by approximately \$300,000 underbilled for phones. Additionally, during administrative review of the repayment determination, the Commission determined that \$245,749.02 in previously unbilled lighting costs could be credited to the General Committee as well.

and are not included in the allowable, reimbursable press travel costs. The general areas where disallowed costs were found include catering and ground transportation and event-related costs. It can be concluded that \$46,892.49 (\$24,952.19 in catering costs and \$21,940.30 in ground transportation costs (includes a 10% administrative fee that the General Committee had charged the press)) were not reimbursable by the press and could not be offset against the General Committee's expenditure limitation. The following two tables set forth the specific invoices for catering and ground transportation that were disallowed as billable to the press, along with the reasons for the disallowance.

Improper Reimbursements for Catering

\$4,554.17 - (leg 50631008) \$ 212.46 - (50671011)	For the cost of campaign staff hotel rooms charged as press catering
\$2,610.59 - (30660926)	For a double-billing to the press of telephone charges
\$2,963.20 - (31151028)	For the cost of catering associated with meetings
\$1,001.79 - (50400919)	For catering for which no documentation exists establishing that the catering was made available to the press
\$1,802.66 - (131008 Bus CA Day 2)	"BBQ" for 500 people, General Committee acknowledges billed to press in error
\$1,355.24 - (30620924)	For buffet breakfasts billed to the traveling press who, according to itineraries, were not scheduled to arrive until 7:30 that evening
\$8,183.70 - (131008 Bus NJ Day 2)	For the cost of catering, which represents the difference between the amount that the traveling press was charged and the amount that campaign staff was charged for identically described catering services

\$22,683.81 - Total

 x 10% _____
 \$24,952.19

23-04-406-3617

Improper Reimbursements for Ground Transportation

\$4,048.00 (leg 131021 Bus MI Day 1) \$1,200.00 (50601003) \$1,597.87 (50721014)	For transportation cost for which no invoices were provided establishing that the transportation was made available to the traveling press
\$ 623.91 (50671011)	For a duplicate payment for the cost of van services
\$1,838.20 (50971028) \$1792.00 (50671011)	For the cost of transportation provided to campaign staff and supporters and the local press
\$2,762.00 (30170825)	For the cost of bus transportation that the bus vendor refunded to the General Committee as an overpayment
\$1,959.75 (51201104) \$ 892.00 (30170825) \$3,232.00 (31151028)	For transportation cost for destinations that did not appear on the itinerary of the traveling press

\$19,945.73 - Total
 + 10% (admin.) _____
 \$21,940.30

The General Committee also collected reimbursements from the press for costs related to events, including costs for lighting, sound, platforms, generators, and security.

Reimbursements for any costs, including event costs, are allowable if the documentation demonstrates that the service was made available to the press. Costs for lighting, sound, generators, and for technicians to install and run the equipment are not specifically included in the Commission's regulations as examples of ground services a committee may make available to the press and for which a committee can receive reimbursement and a corresponding deduction from the expenditure limitation. *See* 11 C.F.R. § 9004.6(a)(1) (1999). However, a committee may demonstrate that services not specifically included as examples fall within the regulation if the committee is able to show that services made available to media personnel

23-04-406-3518

enabled them to perform their work obligations or assisted them in performing their work obligations and therefore were press-related rather than event-related costs. *See id.*

The General Committee must submit invoices or other documentation demonstrating that the services were made available to the press. An analysis of submitted invoices demonstrates that the General Committee did not always meet this burden. In several cases, invoices do not demonstrate that services were provided exclusively to the press, but suggest that the press and the General Committee both made use of the services. In these cases, an allocation of costs is appropriate, although often, the press was exclusively billed for the item. For a few travel expenses, reimbursement from the press is disallowed because the costs relate to items such as teleprompters or microphones, which appear to be campaign-related expenses. Significant reimbursements are also sought from the press for lighting and sound at the events. Since sound and lighting provided benefits to both the press and the campaign, these costs should be allocated between the two.

Based on the above-stated analysis, it appears that the following event-related costs totaling \$254,242.15 should be disallowed:

Lighting/Sound	\$109,897.78
Generators	\$13,959.50
Security	\$6,443.25
Press Risers	\$16,885.31
Technicians	\$1,292.50
Baggage	\$1,980.35

23 04 406 3619

Misc. costs (flags, ropes, drapes)	\$62,391.65
Phones	\$6,352.50
No invoice	\$35,039.31
TOTAL	\$254,242.15

In sum, \$24,952.19 in catering, \$21,940.30 in ground transportation, and \$254,242.15 in event costs were determined not to be press costs and could not be reimbursed by the press.

Additionally, a separately categorized disallowed charge of \$2,227.92 from a post-nomination event in Denver is also included in the calculation of disallowed expenses. Thus, the disallowed invoices total \$303,362.56 ($\$24,952.19 + \$21,940.30 + \$254,242.15 + \$2,227.92$).¹⁶

¹⁶ The balance of the excess press reimbursements are not necessarily related to any disallowed billings, but rather, probably relate to excess collections for the flights.

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VI. MUR 4670 - ILLEGAL CONTRIBUTIONS

A. Applicable Law

It is unlawful for any corporation to make any expenditure or contribution in connection with a federal election and it is unlawful for a political committee to receive such a contribution. 2 U.S.C. § 441b. It is unlawful for any foreign national to make a contribution in connection with any election for any political office and it is unlawful for a political committee to receive such a contribution. 2 U.S.C. § 441e.

B. Factual and Legal Analysis

The complaint in MUR 4670 alleges that General Committee disclosure reports disclose “travel reimbursements’ from the media , including foreign media which may involve foreign nationals or foreign corporations prohibited by law” which have the effect of “providing extra income to [the Dole general election] campaign so that he may spend above the legal limits of the law as cited above.” Attachment 3 at 2. In response to the complaint, the General Committee states that, pursuant to the Commission’s regulations and the Commission’s Financial Compliance and Control Manual for Presidential Primary Candidates Receiving Public Financing, it is entitled to collect reimbursements from the traveling press and that these reimbursements do not constitute contributions. Attachment 4.

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The complaint appears to raise two issues: (1) whether the General Committee exceeded the expenditure limitation by collecting excessive press reimbursements; and (2) whether the excessive press reimbursements constitute prohibited contributions.³² The issue of whether the General Committee has exceeded its expenditure limitation has been addressed earlier in this Report. This section addresses the issue of whether the press reimbursements constitute contributions made in violation of the Act.

It appears that the General Committee has received prohibited corporate and foreign national contributions, as well as excessive contributions from the various press entities when it received excessive reimbursements from these entities. The factual and legal conclusions set forth earlier in this Report in the discussion on the expenditure limitation violation establish that the press made payments to the General Committee for services not provided to the press or in amounts exceeding the value of the services provided. The payment of money in an amount exceeding the value of the service provided constitutes something of value to the General Committee, and thus, is a contribution. 2 U.S.C. § 431(8). The press entities making reimbursements to the General Committee include ABC News, CNN, and the Washington Post, all of which are incorporated. Additionally, foreign media entities such as Agence-France Press also made excess reimbursements. Finally, there are some instances where it appears that individuals unrelated to a corporate media entity were paying reimbursements, and these reimbursements exceeded the \$1,000 contribution limitation.

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Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Dole/Kemp '96, Inc. and Robert J. Dole, as treasurer, violated 2 U.S.C. § 441b by receiving prohibited contributions from corporate press entities, violated 2 U.S.C. § 441e by receiving prohibited contributions from foreign nationals, and violated 2 U.S.C. § 441a(f) by receiving excessive contributions from individuals. Additionally, in agreeing to accept the full amount of their entitlement, the candidates signed an agreement to not accept private contributions. *See* 26 U.S.C. § 9003(b). Since the transactions described in this section amount to private contributions, the candidates have violated the agreement by accepting the contributions. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Dole/Kemp '96, Inc., and its treasurer, Robert J. Dole, violated 26 U.S.C. § 9003(b) by accepting a private contribution.³³ However, we recommend that the Commission take no further action with respect to all of these findings. Information obtained in the audit context establishes that legitimate questions arise with respect to what costs can be billed to the press. For instance, the Commission determined that certain costs such as lighting and sound costs can be shared between the press and the General Committee, even though the General Committee, in some instances, billed the press for the entire cost of the service. Furthermore, since the amounts of excessive reimbursements are included in the amount of overage in the expenditure limitation recommendation and proposed civil penalty emanating from that finding,

³² The complaint specifically raises the issue of foreign national contributions. However, some of the press entities are corporations and thus, their excess reimbursements could constitute prohibited corporate contributions.

³³ Additionally, this Office is not making recommendations related to reporting violations for the excess press reimbursements since the reimbursements were, in fact, reported, although under the theory of the case, they more properly should have been reported as contributions.

it does not appear necessary to use those same transactions as a basis to calculate a civil penalty
for illegal contributions in this instance.

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VIII. RECOMMENDATIONS

1. Find reason to believe that Dole for President, Inc., and its treasurer, Robert J. Dole, violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a) by spending \$59,772 in excess of the Iowa spending limitation; but take no further action.

3. Find reason to believe that Dole/Kemp '96, Inc., and its treasurer, Robert J. Dole violated 2 U.S.C. § 441a(e); 441b; 441e and 26 U.S.C. § 9003(b) in accepting \$809,508.88 in contributions from the press, but take no further action.

23-014-406-3627

12/6/00
Date

Lawrence M. Noble (by GCB)
Lawrence M. Noble
General Counsel